

AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1616

Introduced by Assembly Member Montanez

February 21, 2003

An act to add Division 10 (commencing with Section 7920) to Title 1 of the Government Code, relating to intellectual property.

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, as amended, Montanez. Intellectual property rights.

Existing law provides generally for the registration and protection of trademarks, and prescribes requirements relating to protection of intellectual property applicable to specific state agency activities.

This bill would enact the California Intellectual Property Rights Act, which would generally provide that state-owned intellectual property, except as specified, is dedicated to the public domain. The bill would prescribe requirements applicable to state contracts and would prescribe the rights to and use of income derived from the licensing of inventions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Division 10 (commencing with Section 7920) is added to Title 1 of the Government Code, to read:

DIVISION 10. CALIFORNIA INTELLECTUAL
PROPERTY RIGHTS ACT

7920. This division shall be known and may be cited as the California Intellectual Property Rights Act. Except as otherwise provided in this division and notwithstanding any other provision of state law to the contrary, this division shall govern the ownership, protection, exploitation, and public dedication of all state-owned intellectual property rights.

7921. As used in this division, the following words and phrases shall have the following meaning:

(a) “Copyrights” means those rights that are protected by United States copyright law (17 U.S.C. Sec. 101, et seq.).

(b) “Patentable inventions” are inventions that fall within the scope of patentable subject matter under the laws of the United States but that are not yet the subject of an issued patent.

(c) “Patented inventions” means those rights reflected in subsisting patents issued by any government, including the United States.

(d) “Practical application” is as defined in Section 201(f) of Title 35 of the United States Code.

(e) “State-owned intellectual property” means any and all intellectual property that is owned in whole or in part by the state, including all trademarks and service marks, collective marks and certification marks, all copyrights, all trade secrets, all patentable inventions, and all patented inventions.

(f) “Trade secrets” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(g) “Trademarks,” “service marks,” “collective marks,” and “certification marks” mean those rights as defined by Section

1 1127 of Title 15 of the United States Code or Chapter 2
2 (commencing with Section 14200) of Division 6 of the Business
3 and Professions Code.

4 7922. It is the general policy of this state to encourage
5 innovation in the sciences, creativity in the arts, and free and open
6 government. In recognition of this policy, and except as set forth
7 in this division or as required by federal law, no agency of this state
8 shall have the right to protect, assert, or exploit state-owned trade
9 secrets, patentable inventions or patented inventions and all
10 copyrights in works made for hire by state employees or
11 contractors are hereby dedicated to the public domain. All
12 agencies of the state are authorized to adopt trademarks, service
13 marks, collective marks, and certification marks (hereinafter
14 referred to collectively as “trademarks”) and, at their discretion,
15 may register and protect those trademarks so long as they abide by
16 applicable law.

17 7923. The following entities of the state are exempt from this
18 division and may independently develop, implement, and enforce
19 their own policies for intellectual property, including intellectual
20 property arising under agreement with the state, directly or
21 indirectly, or that is jointly owned with the state:

- 22 (a) The University of California.
- 23 (b) The California State University.
- 24 (c) The California Community Colleges.

25 7924. Notwithstanding the general policy of this state as
26 reflected in Section 7922, intellectual property rights in the
27 following are not dedicated to the public domain unless made
28 subject to a specific statute to that effect:

- 29 (a) Copyrights and patent rights that were assigned to the state
30 by gift, bequest, or purchase.
- 31 (b) State-owned copyrights, trade secrets, patentable
32 inventions, and patented inventions in computer software and
33 computer programs *and associated documentation and materials*.
- 34 (c) State-owned copyrights in works of art that were
35 commissioned through an “art-in-public-places” project.
- 36 (d) State-owned copyrights and trade secrets in tests and
37 answers to tests that were created by or for the state.
- 38 (e) *State-owned trade secrets as permitted under the California*
39 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*
40 *of Division 7).*

1 7925. Notwithstanding the general policy of this state as
2 reflected in Section 7922, all agreements whereby this state
3 contracts for goods or services and that are likely to result in the
4 development of trade secrets and patentable inventions or the
5 creation of works of authorship shall contain a provision that
6 specifically deals with the ownership and use of those intellectual
7 property rights. The precise terms of the required contractual
8 provision shall be a point of negotiation between contracting
9 parties that shall consider, but not be limited to, the purpose of the
10 contract, applicable law, and the needs of the contracting parties.

11 7926. All entities of the state that are not exempted from this
12 division and that are authorized under this division to protect,
13 assert, and exploit trademarks, works of authorship, trade secrets,
14 patentable inventions, or patented inventions shall comply with
15 any and all applicable federal law. To the extent that those entities
16 elect to pursue patent protection for their inventions, they shall
17 take steps, including the possible licensing of their inventions, to
18 achieve the practical application of those inventions as soon as
19 possible. All income derived from the licensing of those
20 state-owned inventions or works of authorship (after paying
21 applicable royalties to inventors and patent prosecution and
22 maintenance costs) shall be credited to a special account in the
23 General Fund for the agency and shall be used for further research
24 and development purposes.

25 7927. Any and all rights in any and all inventions conceived
26 of, developed, or reduced to practice by employees of this state are
27 owned by this state and shall be formally assigned to the state when
28 requested. This section does not apply to an invention that the
29 employee developed entirely on his or her own time without using
30 any of the state's equipment, supplies, facilities, or trade secret
31 information except for those inventions that either (1) relate at the
32 time of conception or reduction to practice of the invention to the
33 employee's work for the state, or (2) result from any work
34 performed by the employee for the state.

35 7928. All litigation to enforce the intellectual property rights
36 of the state shall be handled by the Attorney General ~~unless a~~
37 ~~conflict of interest exists~~, *consistent with existing law*.

38 7929. Nothing in the California Public Records Act (Chapter
39 3.5 (commencing with Section 6250) of Division 7) shall preclude
40 the state or any of its agencies from obtaining and enforcing, in



1 accordance with this division (1) trademark or copyright
2 protection for any public record, except that this authorization
3 shall not restrict public access to or fair use of copyrighted
4 materials and shall not apply to writings which are merely lists or
5 other compilations; or (2) patent or trade secret protection in
6 accordance with this division, and the state and its agencies may
7 deny public access to information concerning state-owned trade
8 secrets and patentable inventions for the period of time, not to
9 exceed six months, necessary for the state to consider and apply for
10 any applicable patents.

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